

Exhibit 19



Transcript of Thomas J. Gibbons, Individually and as Corporate Designee

Date: December 13, 2016

Case: Corcoran, et al. -v- CVS Pharmacy, Inc.

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Transcript of Thomas J. Gibbons, Individually and as Corporate Designee^{28 (109 to 112)}

Conducted on December 13, 2016

<p>109</p> <p>1 step that makes a price no longer be a usual 2 and customary price? 3 A You're asking -- if I may, you're 4 asking me to answer on behalf of my PBM 5 background? 6 Q I'm asking just in your view, 7 because as I understand, you've been 8 designated as an expert by CVS on that, so 9 what is your -- 10 In your opinion, first, why 11 does it matter? What is significant about 12 enrollment that makes a price obtained after 13 enrolling in a program not a usual and 14 customary price? 15 A So I'll answer on behalf of our 16 program. 17 You know, our program is 18 something we offered out to the community 19 that was a decision point, that a -- a 20 consumer needed to determine whether the cost 21 of enrollment and the product mix that was 22 available on the products, as well as signing 23 up and going through the enrollment and HIPAA 24 waiver, was a program they wished to 25 participate in.</p>	<p>111</p> <p>1 different price point for a subset of drugs 2 for a specific quantity of drugs. If 3 everyone enrolled in that, then that's the 4 price they would get, but it was entirely 5 differently from our usual and customary 6 price. 7 Q And did -- you mentioned discounts. 8 There are some definitions 9 in -- of usual and customary prices in 10 contracts. I believe the Caremark provider 11 contract with CVS expressly includes 12 discounts. 13 You're familiar with those 14 kinds of definitions of usual and customary 15 prices, right? 16 MR. GEYERMAN: Objection to 17 form. 18 A I don't have them all memorized, 19 but I'm certainly familiar with them. 20 Q Okay. 21 And there's no question that 22 the Health Savings Pass Program offers 23 discount prices? 24 MR. GEYERMAN: Objection to 25 form.</p>
<p>110</p> <p>1 And if it was, it was 2 something we put them into through Health 3 Savings Pass. It was entirely different than 4 we would set up as a usual and customary 5 pricing that we used across the rest of our 6 public business. 7 Our customer needed to make an 8 active decision to participate in that 9 program. 10 Q What if every single person who is 11 a cash-paying customer paid the Health 12 Savings Pass prices and no one paid the 13 official U&C price that CVS asserted it had? 14 Would those HSP prices still 15 not be considered usual and customary prices 16 in your view? 17 A They would not. 18 Again, as we process all of 19 our prescriptions, we need to determine what 20 the price would be if there was no form of 21 insurance or discount submitted by our 22 customer, and we need to submit that out to 23 the entire population, not just the two or 24 three percent that might be paying cash. 25 Health Savings Pass created a</p>	<p>112</p> <p>1 Q Right? 2 A I would say the Health Savings Pass 3 Program creates a price point for a 90-day 4 supply of specific medications. 5 Q It's a discount program, right? 6 MR. GEYERMAN: Objection to 7 form. 8 A That price is less than other 9 prices. If you want to call that discount, I 10 would agree with that. 11 But fundamentally, I think the 12 program itself creates a price list that 13 creates a price point for select generic 14 drugs. 15 Q Now, you -- in paragraph 8 of your 16 declaration, if we can turn to that, 17 Plaintiffs' Exhibit 607, you say, "To my 18 knowledge, no PBM or commercial payer has 19 objected to CVS's position." 20 Can I ask you, first of all, 21 have you personally communicated to 22 commercial payers CVS's position that it's 23 contractual definitions of usual and 24 customary do not require CVS to submit the 25 HSP price as its U&C price for</p>

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Transcript of Thomas J. Gibbons, Individually and as Corporate Designee^{29 (113 to 116)}

Conducted on December 13, 2016

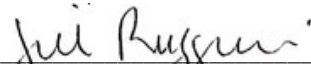
<p>1 program-eligible medications?</p> <p>2 A I believe the majority of those</p> <p>3 conversations were had with payers before I</p> <p>4 left the PBM side and came to work on the</p> <p>5 retail side.</p> <p>6 Q So since you took over in 2011, can</p> <p>7 you think of any communication you've had --</p> <p>8 you personally have had where you conveyed to</p> <p>9 a payer or a PBM CVS's position that you</p> <p>10 state here in paragraph 8?</p> <p>11 A No.</p> <p>12 Q Now, there are -- there have been</p> <p>13 government payers that have objected to CVS's</p> <p>14 position that its contractual definitions of</p> <p>15 usual and customary do not require CVS to</p> <p>16 submit the HSP price as its U&C price for</p> <p>17 program-eligible medications, fair?</p> <p>18 MR. GEYERMAN: Objection to</p> <p>19 form.</p> <p>20 A Oh, I think there's some states</p> <p>21 that have redefined their programs in such</p> <p>22 ways to include programs such as Health</p> <p>23 Savings Pass as part of the -- as pricing</p> <p>24 they're entitled to.</p> <p>25 Q Let's return to that a little bit</p>	<p>113</p> <p>1 A It probably depends on what area of</p> <p>2 the classification is. Typically, we would</p> <p>3 look at three major aspects of pharmacy</p> <p>4 volume.</p> <p>5 One would be a funded benefit.</p> <p>6 Some would be various cash card programs, and</p> <p>7 some would be usual and customary pricing.</p> <p>8 Most of the reports I would</p> <p>9 see, if HSP wasn't a standalone program, it</p> <p>10 would be part of the cash discount programs.</p> <p>11 (Exhibit 478 marked for</p> <p>12 identification.)</p> <p>13 BY MR. GILMORE:</p> <p>14 Q Let me hand you what we marked as</p> <p>15 Plaintiffs' Exhibit 478.</p> <p>16 A That's correct.</p> <p>17 MR. GEYERMAN: Thank you.</p> <p>18 Q Plaintiffs' Exhibit 478 is an email</p> <p>19 with attached slide deck. The beginning</p> <p>20 Bates number is CVSC-315353, and the cover</p> <p>21 email is a March 10, 2015 email from Sam</p> <p>22 Christophersen to you, Mr. Zevzavadjian,</p> <p>23 Ms. Greenbaum, Mr. Shenck, Ms. Greenlef</p> <p>24 and -- I don't know if Shavdia Dewang is a</p> <p>25 man or a woman. Shavdia Dewang.</p>
<p>1 later today.</p> <p>2 Now, CVS categorizes its HSP</p> <p>3 program as part of its retail cash business</p> <p>4 internally, right?</p> <p>5 MR. GEYERMAN: Objection to</p> <p>6 form.</p> <p>7 A I really don't understand that</p> <p>8 question.</p> <p>9 Q Internally --</p> <p>10 MR. GILMORE: Let's go off the</p> <p>11 record.</p> <p>12 THE VIDEOGRAPHER: We are off</p> <p>13 the records at 12:36 p.m.</p> <p>14 (Discussion off the record.)</p> <p>15 the.</p> <p>16 (Recess.)</p> <p>17 THE VIDEOGRAPHER: We are on</p> <p>18 the record at 12:46 p.m.</p> <p>19 BY MR. GILMORE:</p> <p>20 Q The question before we took a</p> <p>21 break, Mr. Gibbons, was internally, CVS</p> <p>22 categorizes the HSP program as part of its</p> <p>23 retail cash business, right?</p> <p>24 MR. GEYERMAN: Objection to</p> <p>25 form.</p>	<p>114</p> <p>1 Have you seen this document</p> <p>2 before?</p> <p>3 A I believe I have.</p> <p>4 Q Let's turn to the slide deck</p> <p>5 itself. And the first page of the slide</p> <p>6 deck, which is on Bates number 315354, says,</p> <p>7 "Solving for four customers segments."</p> <p>8 Do you see that?</p> <p>9 A I do.</p> <p>10 Q Now, there's kind of a grid here,</p> <p>11 right, on this slide?</p> <p>12 MR. GEYERMAN: If you want to</p> <p>13 look at the document before he asks you, go</p> <p>14 ahead.</p> <p>15 Q Sure.</p> <p>16 (Deponent read the document.)</p> <p>17 A Okay.</p> <p>18 Q So this slide deck here on the</p> <p>19 first page, it has a grid with categories for</p> <p>20 cash and non-cash customers, right?</p> <p>21 A It does.</p> <p>22 Q And the row for cash has two</p> <p>23 groups, cash patients who pay the discount</p> <p>24 price and cash patients who pay the U&C</p> <p>25 price, right?</p>

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Transcript of Thomas J. Gibbons, Individually and as Corporate Designee ^{66 (261 to 264)}

Conducted on December 13, 2016

<p>261</p> <p>1 actually -- I think I'm done.</p> <p>2 MR. GEYERMAN: Are you --</p> <p>3 MR. GILMORE: Yes. So --</p> <p>4 MR. GEYERMAN: Do you want</p> <p>5 three minutes to check your notes or do you</p> <p>6 know you're done?</p> <p>7 (Pause.)</p> <p>8 MR. GILMORE: I have no</p> <p>9 further questions.</p> <p>10 MR. GEYERMAN: All right.</p> <p>11 THE VIDEOGRAPHER: We are off</p> <p>12 the record at 5:35 p.m.</p> <p>13 (Whereupon, the proceedings</p> <p>14 adjourned.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>263</p> <p>1 C E R T I F I C A T E</p> <p>2 I, Jill K. Ruggieri, Registered Merit</p> <p>3 Reporter and Certified Realtime Reporter, do certify</p> <p>4 that the deposition of THOMAS J. GIBBONS, in</p> <p>5 the above-captioned matter, on December 13, 2016,</p> <p>6 was stenographically recorded by me, before being</p> <p>7 sworn by me, a Notary Public in and for the State of</p> <p>8 Rhode Island; that the transcript produced by me is</p> <p>9 a true record and accurate record of the proceedings</p> <p>10 to the best of my ability; that I am neither counsel</p> <p>11 for, related to, nor employed by any of the parties</p> <p>12 to the above action; and further that I am not a</p> <p>13 relative or employee of any attorney or counsel</p> <p>14 employed by the parties thereto, nor financially or</p> <p>15 otherwise interested in the outcome of the action.</p> <p>16</p> <p>17 </p> <p>18 Jill K. Ruggieri, RPR, RMR, FCRR, CRR</p> <p>19</p> <p>20 Transcript review was requested of the reporter.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>262</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, THOMAS J. GIBBONS, do hereby</p> <p>3 acknowledge that I have read and examined the</p> <p>4 foregoing testimony, and the same is a true, correct</p> <p>5 and complete transcription of the testimony given by</p> <p>6 me and any corrections appear on the attached Errata</p> <p>7 sheet signed by me.</p> <p>8</p> <p>9 _____</p> <p>10 (DATE) (SIGNATURE)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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